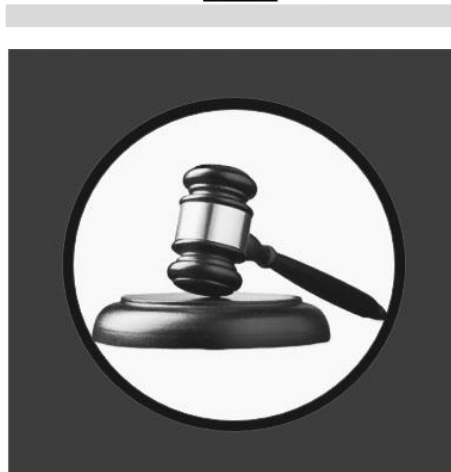


**ESTABLISHING A BULWARK FOR THE  
VOLUNTARINESS OF CONFSSIONAL  
STATEMENTS IN CRIMINAL TRIALS IN  
NIGERIA: TOWARDS RETHINKING SECTION  
15 OF THE ADMINISTRATION OF CRIMINAL  
JUSTICE ACT**



**GABRIEL O. EKOJA**

Gabriel O. Ekoja LL.B (HONS), BL, LL.M, Lecturer II,  
Department of International Law and Jurisprudence,  
Faculty of Law, University of Jos, Jos Nigeria.  
Contact: ogwuchegekoja@gmail.com; 08037310840.

**PAUL M. DAWAP**

Paul M. Dawap LL.B (HONS), BL, LL.M Lecturer II,  
Department of Public Law,  
Faculty of Law, University of Jos, Jos Nigeria.  
Contact: pauldawap83@gmail.com; 08030413979.

**VIVIAN UROWOLI JACDONMI**

Vivian Urowoli Jacdonmi, LL.B (HONS), BL, LL.M Lecturer II,  
Department of Commercial Law,  
Faculty of Law, University of Jos.  
Contact: vivianjacdonmi@yahoo.com; 08037030987.

## **Abstract**

*In every nation of the world, one critical responsibility of law enforcement is the investigation of crime and the provision of on-hands evidential support for prosecuting offenders. Where the offence is grave, investigators would do more to elicit information from suspects, especially that which is regarded as 'the best evidence' – a confessional statement. The process of evoking this evidence usually incorporates methods that generate controversies and concerns for human rights protection. During investigations and trials, the need for the State to punish perpetrators of crime, mostly unspoken, is an undercurrent to the human rights of the defendant. To strike a balance between the rights of the Suspect (Defendant) and the State, sections 15(4) of the Administration of Criminal Justice Act 2015 was worded to take advantage of advancement in digital technology. It provides for discretionary electronic recording of confessions. This paper examined the general principles of confession and sections 15(4) of the Act.<sup>1</sup> The researchers found that despite likely perceived challenges necessitating the discretion on electronic recordings, the hard to ignore, self-incriminating evidence will require a hard-rock convincing status to secure a conviction. This paper, therefore, argued that the trend in evidence gathering, preservation, and presentation in Nigeria, requires a thorough rethinking, especially the discretionary nature of sections 15(4) of the law under review. The researchers accordingly recommended the use of cost-effective audio-visual devices and instruments to record confessions, as well as an immediate amendment of the section to establish a bulwark for the admissibility of confessions.*

**Keywords:** *Confessional Statement, Voluntariness, and Electronic Recording.*

## **Introduction**

The presumption of innocence designed to safeguard the rights of a person standing trial before the Nigerian Courts until proven guilty is an arduous task, which requires the prosecution to prove guilt beyond reasonable doubt.<sup>2</sup> This requirement appears to be the fulcrum of the over-reliance on confessional statements to secure convictions in most criminal trials. More so, confessional

---

<sup>1</sup> Administration of Criminal Justice Act, 2015.

<sup>2</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 36(5); Nigerian Evidence Act, 2011, Section 138.

statements account for an appreciable number of convictions in Nigeria. What is even more revealing is that the Courts admit in evidence, most of these confessional statements with much contest from the Accused or his Counsel. Accused persons usually raise objections to the voluntariness of the confession either due to promise of an advantage, threat, or duress. Even the Courts are very much aware of this unfortunate development and tasks the Bench to act appropriately. This concern explains why the apex Court per Rhodes-Vivour JSC<sup>3</sup> held that:

"Confessional statements are most times beaten out of suspects, and the Courts usually admit such statements as Counsel, and the accused are unable to prove that the statements were not made voluntarily. A fair trial presupposes that the police investigation of crime for which the accused person is standing trial was transparent. In that regard, it is time for a safeguard to be put in place to guarantee transparency. It is strongly recommended that confessional statements should only be taken from a suspect if, and only if his Counsel is present, or in the presence of a legal practitioner. Where this is not done, such a confessional statement should be rejected by the court."

In a bid to address the above aberrations, the Administration of Criminal Justice Act 2015 was enacted. The Act introduced significant innovations in the Administration of Criminal Justice system in Nigeria, prominent amongst which is section 15(4) of the Act, which elevated the process of recording confession to an alternative audio-visual form.

However, for a proper understanding, it is critical to examine the corpus of the law on confessions before the 2015 Act. We will primarily focus on the meaning, nature, and conditions for the admissibility of confessional statements. This work shall also discuss the problem of the law on confession before the 2015 Act, an overview of the Administration of Criminal Justice Act, and the electronic recording of confessional statements. We shall also examine the provision of section 15(4) of the Act, the difference between the Act and the Administration of Criminal Justice Law of Lagos State on the recording of confessional statements, perceived challenges of section 15(4), and the need for electronic recording.

---

<sup>3</sup> *Owhoruke v Commissioner of Police* (2015) 15 NWLR (PT. 1483) 557-576.

## Meaning And Nature Of Confessional Statement

Section 28 of the Evidence Act <sup>4</sup>(EA) 2011 provides that "A confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime." The black's Law Dictionary<sup>5</sup> defines a confessional statement as:

"A voluntary statement made by a person charged with the commission of a crime or misdemeanour, communicated to another person, wherein he acknowledges himself to be guilty of the offence charged and disclosed the circumstances of the act or the share and participation which he had in it."

A joint reading of these definitions reveals that a confessional statement is a voluntary admission of the commission of an offence by an accused person or an inference from his statement suggesting he committed the crime. If such a confession derives from the voluntary admission of the accused, it must be evident in the confession.<sup>6</sup> Where the admission is clear from the statement of an accused person, the confessional statement is regarded as the 'best evidence' on which the court can safely convict. It is for this reason that Amupitan,<sup>7</sup> gleaned from the decision of the Supreme Court in *Saidu v State*,<sup>8</sup> stated that the Police and the Prosecution are always excited when such confession is available as it makes their work faster and easier. The court held thus:

"The evidential value of a confession, if true, is very great. It is very much sought after by police investigators and prosecutors. It lightens the burden of prosecution by dispensing with the need to call a host of witnesses in cases where there are no or very few eyewitnesses."

The nature of a confessional statement relates to its form. It can be written or made orally<sup>9</sup> by a suspect after the commission of the crime. It can be an extra-judicial confession if the accused

---

<sup>4</sup> Nigerian Evidence Act, 2011

<sup>5</sup> Garner B.A, *Black's Law Dictionary* (6<sup>th</sup> Ed. St. Paul Min West Pub.) pg. 296.

<sup>6</sup> Also see *State v Salawu* (2011) 18 NWLR (Pt. 1279) 883.

<sup>7</sup>Joash O. Amupitan, *Evidence Law: Theory and practice in Nigeria* (Lagos: Innovative Communications, 2013), 319.

<sup>8</sup> (1982) 4 SC 41 at 58.

<sup>9</sup> See *Ismail v State* (2008) 15 NWLR, pt 1111, 593.

made it before being charged to court or a judicial confession where it is made after his arraignment. Where it is a judicial confession<sup>10</sup>, the ingredients of the offence must be read and explained to the accused. If having understood the ingredients, he admits committing the offence, the court can convict on such admission of guilt.

### **Conditions For The Admissibility Of Confessional Statements**

Generally, the first requirement for the admissibility of any evidence is relevance. The piece of evidence sought to be admitted must be evidence as to a fact in issue, a fact that is relevant to a fact in issue or facts relevant to a relevant fact.<sup>11</sup> Section 29(1) of the Evidence Act, 2011, therefore, provides that a confession made by a defendant may be given in evidence against him in so far as it is relevant to a fact in issue and is not excluded by the court pursuant to the section.

Once the first hurdle of relevance is crossed, the next is that such a confessional statement must be positive, direct, and unequivocal in relation to the charge before the court. In *Gbadamosi v The State*,<sup>12</sup> it was held that the statement of an accused could only constitute a confession if it admits or acknowledges that the maker thereof committed the offences for which he is charged. It must be clear, precise, and unequivocal. So, for a confessional statement to be admissible under this requirement, it must admit all the ingredients.<sup>13</sup>

### **Voluntary Requirement of Confessions**

Voluntariness is a critical requirement for the admissibility of a confessional statement. A confessional statement cannot be used against an accused person unless the court is satisfied that it is voluntary. It must be shown to be voluntary and free from any influence.

Section 29(2) of the EA, 2001 captures certain ingredients, the presence or absence of which will determine the voluntariness or otherwise of a confession. It provides that a confession is inadmissible and evidence thereof cannot be given if it was obtained by (a) oppression or (b) in consequence of anything said or done which is likely to render it unreliable. Here, the prosecution is required to prove voluntariness beyond reasonable doubt.

---

<sup>10</sup> Judicial confessions are usually made orally during criminal trials.

<sup>11</sup> Evidence Act 2011, Sections 1, 4, and 5.

<sup>12</sup>(1992) 11/12 SCJN (Pt. 2) 268 at 276.

<sup>13</sup> Amupitan (n 7) 327.

The circumstances mentioned in section 29(2) (b) appear to suggest cases of inducement or promise made to elicit a confession. Ultimately, voluntariness is determined by the presence or otherwise of oppression, inducement, and promise.

Oppression is defined in section 29(5)<sup>14</sup> to include "torture, inhuman or degrading treatment, and the use of threat of violence whether or not amounting to torture. The United Nations (UN) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>15</sup> defines torture thus:

It is an act by which severe mental or physical pain or suffering is intentionally inflicted against an individual, at the instigation of or with the consent or acquiescence of a public official. The purpose of which is to obtain information, or a confession, or punishment for an act the individual has committed or is suspected of having committed, or intimidation, coercion, or discrimination of any kind.<sup>16</sup>

However, we should note that Section 31 of the EA, 2011 insists that:

If a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the defendant for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of these questions, or because he was not warned that he was not bound to make such statement and that evidence of it might be given.

Thus, what is important is that the confession is voluntary. The above provision endorsed the decision in *James Igbinoia v The State*,<sup>17</sup> where the Supreme Court held:

... It is this climate of freedom that imparts the voluntary nature to the words spoken at that point in time. If the words are confessional, they constitute an extra-judicial confession which, when tested for truth and found proved, went to establish the guilt of the author/suspect of the crime alleged.

---

<sup>14</sup> Evidence Act, 2011.

<sup>15</sup> U.N. Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 1. Also see Section 2 of the Nigerian Anti-Torture Act, 2017.

<sup>16</sup> Nigeria ratified the UN Convention on June 28, 2001.

<sup>17</sup> (1981) LPELR-SC.43/1979.

Whatever be the case, most statements alleged to be confessions are a subject of vicious contests on the grounds of it not having been made by the accused; or that he was tricked into signing it; or that it was not voluntarily made. The procedure for determining whether such a contested confession enjoys the blessings of admissibility rests in an unimaginably uncertain complexity.

### **The Problem With The Law On Confession Prior To The ACJA 2015**

During the investigation of a crime, one or more suspects are invited for interrogation who, often, make statements in the absence of legal representation. Usually these suspects are randomly and arbitrarily arrested either because they were found at the scene of the crime or because another suspect named them in matters not necessarily connected thereto. Where the alleged offence is capital in nature, suspects are usually threatened, beaten, and tortured into making confessions. In 2005, the Human Rights Watch<sup>18</sup> interviewed a twenty-three-year-old construction worker who was awaiting trial in Enugu Prison and graphically represented his experience. The interviewee said he slept on the floor in an open cell with over twenty people with their hands and legs chained at the police station. The following morning, he was taken to a small room - "torture room" where the interrogating officers asked him to admit to being an armed robber. Upon refusal, the police handcuffed, tied, and hung him with hooks on the wall like goalposts. He was beaten, broomstick hair was inserted into his penis, and tear gas powdered-clothe put around his eyes. This torture went on for four hours at the instruction of a senior police officer - an inspector of the Nigerian police.

Regrettably, the above inhuman tactics of coercing confessions are expected. This is because, although the Evidence Act contains explicit provisions as to what confession is and insists that it must be voluntary, it did not sufficiently provide for how confessions must be taken to ensure transparency and voluntariness. It is for this reason most confessional statements are challenged with strong, passionate objections during trials. The only attempt to resolve this problem is the practice of a trial-within-trial, which is a separate trial used to determine the

---

<sup>18</sup> Human Rights Watch, 'Rest in Pieces: Police Torture and Deaths in Custody in Nigeria.' *Human Rights Watch* [Vol 17, No. 11(A), July 2005] <<https://www.hrw.org/reports/2005/nigeria0705/6.htm>> accessed 12 August 2020.

voluntariness of a confession. It is as complicated as the enormous time it takes to conclude one.<sup>19</sup> Even after this burdensome process, the challenged confession is usually admitted in evidence against the accused.

The other problem is the presumption of regularity in favour of the prosecution. This presumption is mostly unspoken, but it acts as a riptide to objections raised to the admissibility of a confession. Once there is evidence that the accused's signature or fingerprint impression, and the required cautionary statements on the confessional statement were administered, regularity is presumed, and the onerous task of disproving the reliability of the confession shifts to the accused with eminent fatality.

Furthermore, the excessive delays before and during trials, chiefly occasioned by infrastructural deficits and forces of law, are critical to the voluntariness of a confession. Usually, when a suspect is arrested, he is detained for an extended period awaiting trial, during which he will be viciously tortured into confessing a crime he did not commit. If there are injuries during the torture, the suspect is treated at the police clinics or hospitals where it is only fictional to anticipate a medical report that will be adverse to the case of the prosecution. Therefore, reference to scars or other marks on the suspect will be difficult to link to a coerced confession during the trial without a more assuring corroborating evidence.

Moreover, a merely written confession has no more to say than its content. Although the content of a confessional statement is required to be proved, the 'blink of an eye' best describes how easy it is for the police and other law enforcement agents to produce witnesses in support. In fact, their evidence is only to corroborate the content of the confessional statement, which is the centrepiece. Nevertheless, a whole lot of inhuman treatment goes on before and during the recording of these statements, evidence of which the law on confession is incapable of requiring its production during trials.

Similarly, the psychological trauma foisted on the suspect at the police station is massive. The suspect in custody is all by himself, surrounded by many vicious-looking officers, bearings

---

<sup>19</sup> For instance, in *Akazeze v FRN* (2018) LPELR-43922(CA) a trial within trial was ordered on 19 November 2015 wherein 5 witness gave evidence, final addresses filed and ruling delivered in May 2017. An appeal was thereafter filed against the ruling of the trial court in the trial with trial in consequence of which the case was remitted for trial *de novo* before another judge.



firearms, teargasses, batons, weeps, belts, and he is bombarded with questions and threats of violence if he does not confess. Confessions are therefore expected, irrespective of the actual status of guilt.

Finally, a suspect may voluntarily confess to a crime on grounds of remorse, religion, or other considerations but may later retract it during the trial. Establishing the voluntariness of the confession will be difficult if it is only written.

The Administration of Criminal Justice Act 2015, therefore, contains salient provisions to address these problems, notwithstanding the question of its sufficiency.

### **An Overview Of The Administration Of Criminal Justice Act**

In recent times, the Administration of Criminal Justice Act (ACJA) 2015 is the most comprehensive reform in the criminal justice administration in Nigeria. Some of these reforms include provisions on the prosecution of offences by only lawyers<sup>20</sup> and speedy trial of cases with specific reference to the prohibition of stay of proceedings in criminal trials.<sup>21</sup> It also made provision for the day-to-day conduct of a trial, and a maximum of 14 days where impracticable, but not exceeding a total of five adjournments from arraignment to final judgment. Intervals of adjournments are reduced to 7 days, inclusive of weekends if the trial could not be concluded within five adjournments.<sup>22</sup>

To further ensure a delay-free trial, the Chief Judge is obligated to assign information within 15 working days of its being filed and issue a notice of trial within ten working days of assignment.<sup>23</sup> A defendant may raise objections to the validity of a charge/information at any stage of the proceeding, the ruling will be delivered with the judgment of the substantive case.<sup>24</sup>

On unlawful arrests, section 7 of the Act abolished the practice of arresting any person(s) in lieu of a suspect. The ACJA further incorporated the constitutional safeguards relating to arrest by insisting that where a person is arrested in connection with a crime, such a suspect is entitled

---

<sup>20</sup> Administration of the Criminal Justice Act, 2015. Section 106. This is a radical departure from the decision in *FRN v Osahon* (2006) 5 NWLR (Pt. 973).

<sup>21</sup> ACJA 2015. Section 306.

<sup>22</sup> ACJA 2015. Section 396 (3), (4), and (5).

<sup>23</sup> ACJA 2015. Section 382 (1) and (2).

<sup>24</sup> ACJA, 2015. Section 396 (2).

to be informed on the cause of arrest and shall be accorded humane treatment, having regard to the dignity of his person.<sup>25</sup>

The ACJA also made provisions for remand time limit. Section 296 of the Act provides that a suspect shall not be remanded for more than 14 days at first instance, renewable for a time not exceeding fourteen days where "good cause" exists. If at the expiration of the remand order, Legal Advice<sup>26</sup> is still awaited, the court shall issue hearing notices<sup>27</sup> to authorities at whose instance and custody the suspect is remanded, and adjourn for another period not exceeding fourteen days for authorities concerned to appear before it and explain why the suspect should not be released unconditionally. This provision is remarkable because the Nigerian prisons are overpopulated, primarily because of a considerable number of suspects awaiting trial and usually remanded indefinitely. This lengthy remand periods copulates with the mostly cruel and oppressive prison conditions, and has the capacity to weigh heavily on the emotional strength of an inmate to resist being coerced into making false and incriminating confessions.

#### **Electronic Recording Of Confession Under The ACJA**

A Defendant's denial of ever making a confessional statement or that it was made under duress or other such vitiating factors is primarily due to how it is made - merely in writing. The ACJA now provides that a Confessional Statement can be made through electronic recording in a retrievable video compact disc or such other audio-visual means. Section 15(4) of the Act provides that *where a Suspect who is arrested volunteers to confess, the police officer shall ensure that his statement shall be written and may be recorded electronically.*<sup>28</sup>

The above provision also enjoys support from Section 17(2) of the Act, which provides that the statement of a suspect may be taken in the presence of a Legal Practitioner of his choice or where he has none, in the presence of an officer of Legal Aid Council of Nigeria, an official of a civil society organisation, a Justice of Peace or any other person of his choice.<sup>29</sup>

---

<sup>25</sup> ACJA, 2015. Section 6 and Section 8(1).

<sup>26</sup> Legal Advice is an advisory document stating whether or not a suspect should be charged formally with an offence.

<sup>27</sup> The notice is an inquiry into the awaited legal advice.

<sup>28</sup> ACJA, 2015. Section 15(4).

<sup>29</sup> ACJA, 2015. Sections 17(1) & (2).

Sections 15(4) and 17(2) of the Act are not surprising to the Researchers. This is because Section 1(1) of the Act is quite emphatic and sets out the purpose of the Act, which among other things includes to ensure that the administration of criminal justice system in Nigeria promotes efficient management of criminal justice institutions and speedy dispensation of justice.<sup>30</sup>

A combined reading of the above provisions certainly re-echoes the new leaf in the promotion of the Administration of Criminal Justice in Nigeria. Seemingly, it placed the country on the same pedestal with other progressive sovereign states across the globe. However, the possibility of its living up to its full potential is of grave concern. This concern can readily be spotted from the difference in the provisions of the ACJA and ACJL on the electronic recording of confessions.

### **The Difference Between ACJA And ACJL On Recording Of Confessional Statements**

The Administration of Criminal Justice Law of Lagos State, 2011 amended the ACJL 2007, and it is the landmark reform believed to influence the birth of the Administration of Criminal Justice Act 2015, applicable in all federal courts in Nigeria. Under the administration of Criminal Justice Law of Lagos State, electronic recording of confessions is mandatory. Section 9(3) provides thus:

"Where a person who is arrested with or without a warrant volunteers to make a confessional statement, the Police shall, ensure that the making and taking of such statement is recorded on a video and the said recording and copies thereof may be produced at trial, provided that in the absence of video facility, the said statement shall be in writing in the presence of a Legal Practitioner of his choice." (Emphasis ours).<sup>31</sup>

The Administration of Criminal Justice Act 2015 also captures the need for electronic recording of confessions by providing that:

"Where a Suspect who is arrested with or without warrant volunteers to make a confessional statement, the police officer shall ensure that the making and taking of

---

<sup>30</sup> ACJA, 2015. Section 1(1).

<sup>31</sup> Administration of Criminal Justice Laws of Lagos State 2011. Section 9(3).

the statement shall be in writing and may be recorded electronically on retrievable video compact disc or such other audio-visual means."<sup>32</sup>

A cursory look at these provisions reveals that the Administration of Criminal Justice Law of Lagos State explicitly used the word "Shall," which the Nigerian Courts construe to mean a mandatory obligation, the failure of which is fatal to the admissibility of a confession. In *Joseph Zhiya v The People of Lagos State*,<sup>33</sup> the court held that:

*"Failure to comply with section 9(3) of the ACJL, 2007 of Lagos State, which requires video recording of the making of a confessional statement or, in its absence, the presence of the suspect's Legal Practitioner, during the writing of such statement, rendered such statements impotent and inadmissible."*

Conversely, the Administration of the Criminal Justice Act 2015 took a very twisted turn by employing the word "May," which the Courts construe in a plethora of cases to mean a discretionary obligation.<sup>34</sup> However, in a proactive step, the Court of Appeal, recently held in *Nwakuche Nnajofofor v The Federal Republic of Nigeria*,<sup>35</sup> that the use of the word "May" in the provision of sections 15 (4) and 17(2) of the Administration of Criminal Justice Act 2015, are mandatory and not permissive. The court held thus:

"Given the foregoing, to hold that the word "May" in the said provisions carry a discretionary or permissive meaning would not suppress the mischief the provisions are aimed at curing nor would advance the remedy for it. It would also not add force and life to the cure; rather it would add strength to the mischief and that would not be *pro bono publico*. Given the objective of the provisions, to give a permissive colouration to the provisions would mean that the Legislatures gave a cure to the

---

<sup>32</sup> ACJA, 2015. Section 15(4).

<sup>33</sup> (2016) LPELR -40562 (CA).

<sup>34</sup> For example, in *Messy v Council of the Municipality of Yass* (1922) 222 SRNSW 494 per Cullen, CJ. at pp 497, 498 it was held that the use of the word "may" prima facie conveys that the authority which has power to do such an act has an option either to do it or not to do it.

<sup>35</sup> (2018) LPELR-43925 (CA); also see the case of *Charles v Federal Republic of Nigeria* (2018) LPELR-43922(CA) where it was held that Sections 15(4) and 17(2) of the ACJA, 2015 imposes a duty on public functionaries for the protection of its citizens and thus the word 'May' conveys a mandatory obligation.

mischief with one hand and also took it away with the other hand. That would reduce the provisions to futility and defeat their purpose."

While we appreciate the thinking of the Appellate Court in suppressing mischief by construing the word "May" to mean a mandatory obligation, we however submit with utmost respect, that this decision derogates from the original intendment of the ACJA. Sections 15(4) and 17(2) of the ACJA are closely modelled after Section 9(3) of the ACJL but apparently and deliberately so, the word 'shall' was replaced with the word 'May' in the ACJA. This is no mere inadvertence. In Section 15(4) there is a mandatory 'Shall' in writing a confession, but a discretionary 'May' when recording the same confession. What is more saddening is that Section 15(4) is particular about a suspect who voluntarily wishes to confess and not just offering to make any sort of statement. The word 'May' in the circumstance, is a complete misfit and appears to be a waste of legislative investment.

Section 17(2) on the other hand, which could be thought of as a remedy to the inadequacy of Section 15(4), presents inherent problems. First, in its narrow sense, the section relates to the first statement of the suspect upon arrest, whether confessional or not, although a liberal interpretation would mean any statement relating to the allegation. Secondly, the section also used the word 'May,' the interpretation which is contentious. A legislature that used the word 'shall' in other provisions of the same Act could not have inadvertently used 'May' if the intention is to convey a compulsory mandate. More so, the legislature is not bereft of legal professionals who advise on legal issues on matters relating to legislative duties, a process which can readily demystify the difference in the legal force of both words. Lastly, whether subsection (2) is to be construed as having a mandatory force or not, the presence of the lawyer during the writing of the confessional statement makes him a witness rather than an advocate if an objection is raised to its admissibility. Moreover, neither of the provisions under consideration or any other provision of the ACJA made any provision to address this conflict of status. This has legal,<sup>36</sup> psychological, and financial implications.

---

<sup>36</sup> For instance, if doubt is casted on the evidence of the lawyer during cross-examination as a result of inexperience, nervous fit, or non-preparedness, the confession will be admitted, notwithstanding it may be involuntary.

Glaringly, the Court of Appeal was proactively prompt to deal with this unnecessary inadequacy in order to protect the rights of citizens against the practice of torture and coercion during the investigation of crimes. This is a step most commendable. However, the legislature must do the needful to strengthen this courageous proactivity.

Leaning backwards, it appears the reason for substituting the word 'Shall' with 'May' could be due to some likely perceived challenges that may impede the full implementation of Section 15(4) of the ACJA 2015 if the word 'Shall' is used. We will consider some critical ones.

### **Perceived Challenges Of Section 15(4) Of The ACJA 2015**

Successful implementation of section 15(4) will come at a cost. This cost relates to providing some unaddressed electronic and environmental support Techs. These tech supports are seen to likely remain un-provided for, or the provision of which occupies a bleak expectation of a leper's hopeless wish to ride a horse. A brief discussion of some of these perceived challenges is given hereunder.

**Financial Implications:** The financial implications of implementing the lofty innovations of the Administration of Criminal Justice Act 2015 is one major challenge with many issues. This includes the enormous cost required to acquire the much-needed electronically recording devices, maintained a steady power supply, and provide data storage and retrievable devices. All of these are capital intensive.

**The Recording Devices:** Section 15(4) of the Act makes it expedient for the recording device to be purpose-oriented. The device must be able to clearly capture both the identity of the suspect and his confession electronically. However, the Act is completely silent about the type of electronic recording device to be used, neither is there any hint as to the nature of the recording environment in which the confession is to be captured. Thus, it is necessary to draw examples from other climes. In the United States, a set of high-end average police interview recording system can capture interrogations of between 720p to 4k resolution and video quality. This video quality is referred to as High Definition (HD). The cost of such a set could range from \$4,000 to

\$10,000<sup>37</sup> as determined by market forces of demand, the company of manufacture, product type and model, and the seller. The Naira equivalent of this cost will depend on the prevailing exchange rate<sup>38</sup> and could range from ₦1, 520,000 to ₦3, 800,000 per set. This recording set includes the recorder hardware, microphones, camera, input devices, cables and power interfaces. It is important to note that this set is for a single room.

Giving the above, the cost of equipping Nigerian police outpost in their thousands will be massive.

**Incessant/Epileptic Electricity Power Supply:** Electronic recording of confessions will require a steady or prompt electric power supply. The Nigerian Epileptic power supply will be a significant challenge to the electronic recording of confessions. It is no news that even the cosmopolitan cities across Nigeria cannot boast of steady power supply, and it is disheartening to imagine the situation in most rural areas that never have the privileged of having national electricity installations in the first place. The alternative to this challenge would be to provide solar power systems or electric power generators, which has huge cost implications.

**Skilled Manpower:** Quite apart from the problem of providing electronic recording devices and maintaining a steady power supply, skilled manpower is required to operate these high-end devices for best audio-visual results. Most of the law enforcement agencies rarely employ this kind of technology in carrying out their duties. While they can boast of having educated personnel, lower-ranking personnel who are less educated and careless of the ethics of policing, carry on most of the task of investigation and interrogation. What has further compounded this challenge is that most of these personnel still grapple with accepting the need to preserve and protect the fundamental rights of citizens whom they are obligated to protect. Seemingly, therefore, what purpose will it serve to invest large sums of money in providing these tech facilities if the beneficiaries will be unwilling to use it or cannot guarantee its proper use and maintenance.

---

<sup>37</sup> Priceadmin, 'how much does an interview recorder costs', Price Digital (19 June 2019)

<<https://www.precisedigital.com/how-much-does-an-interview-room-recorder-cost/>> accessed on 8 August 2020.

This is an idea of the cost, which may vary according to manufacture, product type and model, and seller.

<sup>38</sup> The approved exchange rate is ₦380/\$1, CBN Exchange Rates (7 July 202)

<<https://www.cbn.gov.ng/rates/ExchRateByCurrency.asp>> accessed on 7 August 2020. The black Market price ranges from ₦440 to ₦480 per/\$1.

**Recording Environment:** The recording of a confession requires a properly lit room, fitted with soundproof wall and doors, and interview room furniture. A well-designed interview room must be capable of enhancing the quality of audio-visual recordings of confessions. However, the present facilities of most of the law enforcement agencies, especially the Nigeria Police, leaves much to be desired and pose a threat to the implementation of the novel innovation of the Act. If the recording environment is not purpose-oriented, it will be challenging to ascertain whether a recorded confession passes the three fundamental requirements of Legitimacy, Authenticity, and Reliability, and could therefore be of less evidential value.

**Data Storage and Retrieval:** Electronic recording of confession will require a large-capacity data storage device for retrieving such documents. The best of this type is the computer external hard disk drives, having a potential storage capacity above 1 terabyte. These storage devices are fragile and require due care for their storage and preservation. The problem with this is that the Nigeria Police, having not travelled far from an era where it was challenging for them to provide ordinarily writing material (foolscap-sheet) for a suspect to record his statement, will find it more challenging to move to a regime of recording with an electronic device.

**Suspects May Not Confess on Video Tape:** A suspect who is willing to confess without any form of coercion may be unwilling to have his testimony captured on videotape. In the United States, for instance, there appear to be two reasons why some Police Officers reject videotaping. The first being that the failure to secure a conviction should not be attributed to ICT deficits of the officers in charge of investigations and interrogations but some other factors. The second is that suspects find it increasingly difficult to speak on camera.<sup>39</sup> In Nigeria, many people find it difficult to speak on camera on issues generally, whether topical or not. It is therefore appreciable if a suspect decline to have his confession on videotape - coerced or not.

---

<sup>39</sup> Willian A. Geller, 'Videotaping Interrogations and Confessions', National Research for Justice Institute: Research in brief ( march 1993).pdf  
<[http://www.digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?Farticle%3D1013%26context%3Dnij-rib&ved=2ahUKEwiyxoTUm8\\_rAhUJCsaKHZnEDk8QFjAAegQIAhAB&usg=AOvVaw07G88i2R-OARqnMu9iFn-7](http://www.digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?Farticle%3D1013%26context%3Dnij-rib&ved=2ahUKEwiyxoTUm8_rAhUJCsaKHZnEDk8QFjAAegQIAhAB&usg=AOvVaw07G88i2R-OARqnMu9iFn-7)>  
accessed on 1 September 2020.



**The Need For Electronic Recording Of Confession: The Way Out**

Despite the recognisable perceived challenges to the videotaping of confessions, we must seek ways of surmounting these challenges. This, we must do given the need to protect the fundamental rights of citizens and preserve the sanctity of the presumption of innocence. First, it is arguable that the cost of implementing Section 15(4) of the ACJA is enormous. However, when we weigh this cost against the value of human life, the cost of freedom and the need for justice for all, the cost of implementing the said section is negligible. While it will be irresponsible of any government not to make adequate provision for implementation of such a section, it is expedient to find ways out of these perceived challenges while we wait.

Secondly, the fact that a suspect is unwilling to confess on camera suggests that a confession obtained despite such unwillingness is involuntary and must not pass the test for admissibility. Therefore, the need to insist on videotaping confessions is critical because if a suspect is unwilling or coerced, his demeanour can readily give out that information. Where he is tortured, it will be evident from the alleged confession footage. This will oust the burdensome task of proving involuntariness from healed scars or unavailable medical reports. Where he is tortured or lead to say specific phrases or words during the alleged confession, a good microphone will capture the tutor's voice in the video. Similarly, if the suspect's eyes keep moving from the view of the front-facing camera to another direction while the confession is ongoing, it may be suggestive of coercion or tutorship. In this sense, involuntariness could be a feasible conclusion.

Furthermore, videotaping confessions is necessary to Avoid lengthy trials, significantly where an accused person challenges the legitimacy, authenticity, and reliability of a written confession. Videotaping will also help reduce doubts about the voluntary nature of confessions and help to joggle the memories of investigators before and during trials, and may aid their testimony.

Similarly, videotaping confessions has the potential of restoring public confidence in the process of crime investigation and evidence gathering by law enforcement agencies if such confessions consistently show voluntariness.

In light of the preceding discussion, Handy mobile devices, simple data storage devices and ICT training and sensitisation could be ways out of the perceived challenges.

## **Handy Mobile Devices**

Mobile phones have become an indispensable part of our lives. They are the 21<sup>st</sup>-century addiction, and its use is increasingly becoming compulsory these days. Practically, everything can be done with mobile devices – buying and selling, documentations, internet, and networking, mailing and communications, entertainment and games, digital pictures and videos, school, work, advertising - the list are endless. With smartphones, a person can take his life wherever he goes – his job, family, friends, sports, games, entertainment, news, etcetera. Of all these uses, taking snapshots and video recordings are about the easiest. As a fact, Children of about two years can perform essential functions on these devices, including unlocking the screen, swipe through pages or images, and recognise and interact with specific features such as app icons for games.<sup>40</sup> Using a mobile phone camera for videos and photography requires no more intelligence than it is to eat a meal.

We must appreciate the fact that getting an expert video quality recording requires some skill and training. However, perpetrators of crimes have been identified and prosecuted on account of amateur pictures and video footage.

In April 2013, the Federal Bureau of Investigation (FBI) of the United States led the Boston Marathon bombing investigation, which made 'use of crowdsourcing to collect photos and videos from cell phones and surveillance cameras at an unprecedented level... and most of this imagery came from private citizens.'<sup>41</sup> A few days after, the two suspects (brothers) were identified from the imagery. One of the suspects was killed during the manhunt, and the other was arrested, prosecuted, and sentenced to death on a 30-count charge bordering on terrorism.<sup>42</sup> This sentence was vacated in July 2020 and a new trial was ordered.<sup>43</sup>

---

<sup>40</sup> BMJ, '*Even two year old kids are adept at using smartphone touch screens.*', The Indian Press (London, 22 December 2015) <<https://www.sciencedaily.com/releases/2015/12/151221193534.htm>> Accessed on 10 September 2020.

<sup>41</sup> Gary Kessler, '*Smartphones help catch a terror suspect*' CNN (24 April 2013) <<https://edition.cnn.com/2013/04/24/opinion/kessler-digital-forensics>> accessed 10 September 2020.

<sup>42</sup> Wikipedia, '*Boston Marathon bombing*', Wikipedia (Edited 9 November 2020) <[https://en.wikipedia.org/wiki/Boston\\_Marathon\\_bombing](https://en.wikipedia.org/wiki/Boston_Marathon_bombing)> accessed on 10 September 2020.

<sup>43</sup> *ibid.*

In April 2015, a 39-year-old Victorville woman was investigated for child cruelty after a video of her pulling her 3-year-old boy's hair and smacking a computer on his face went viral. A passer-by recorded this video using his mobile phone.<sup>44</sup>

In New Delhi, India, the police arrested Ram Kishan, a 67-year-old shopkeeper, for touching a girl inappropriately while the girl's neighbour Harish recorded the crime using his mobile phone.<sup>45</sup> The police also arrested Harish.

Most recently, four Minneapolis police officers were dismissed and one charged to court over the death of George Floyd. 'Floyd died after Chauvin, one of the four police officers, who is white, pressed his knee against the handcuffed 46-year-old Black man's neck for nearly eight minutes. The officers were responding to a call about a man trying to pass a counterfeit \$20 bill at a nearby store.'<sup>46</sup> Chauvin was charged to court and 'found guilty on three charges: second-degree murder, third-degree murder and manslaughter.'<sup>47</sup> Floyd's death sparked global protests and reactions, following video footage of the incident recorded by a 17-year-old Minneapolis teenager using her mobile phone.<sup>48</sup> One of those reactions was by Will Smith. The American actor was quoted to have said, 'We are not getting these racisms, we are filming these racisms.'<sup>49</sup> This statement describes how handy mobile devices people carry around are efficient in capturing live events, including crimes.

On 25 May 2020, the same day of the George Floyd's incidence, Amy Cooper (white woman) falsely reported to the New York police that a black man (Christian Cooper) who asked her to leash her dog in consonance with the rules of the Manhattan Central Park was "threatening"

---

<sup>44</sup> CBS News, 'Victorville Woman, 39, Investigated for Child Cruelty after Video Goes Viral' CBS YouTube Channel (3 April 2015) <<https://www.youtube.com/watch?v=7X7CZwRPTAY>> accessed on 10 September 2020.

<sup>45</sup> NDTV, '11-Year-Old Molested by Shopkeeper in Delhi: Crime Recorded on Mobile.' Press Trust of India (Delhi, 28 September 2017) <<https://www.ndtv.com/delhi-news/11-year-old-molested-by-shopkeeper-in-delhi-crime-recorded-on-mobile-1756176>> accessed on 10 September 2020.

<sup>46</sup> CBS News, 'Ex-cops charged in George Floyd's death appear in court as judge warns he may move trial.' CBS News (29 June 2020) <<https://www.cbsnews.com/news/george-floyd-death-officers-appear-court/>> accessed on 10 September 2020.

<sup>47</sup> BBC News, 'George Floyd: Jury finds Derek Chauvin guilty of murder.' BBC News Online (US & Canada, 21 April, 2021) <<https://www.bbc.com/news/world-us-canada-56818766>> accessed on 21 April 2021.

<sup>48</sup> Daily Blast LIVE, 'Teen Who Recorded George Floyd Death Receives Backlash' DBL You Tube Channel (28 May 2020) <<https://www.youtube.com/watch?v=3ogXK8dgkZY>> accessed on 10 September 2020.

<sup>49</sup> *ibid.*

her life.<sup>50</sup> Christian had pulled out his phone and recorded the incident which captured the entire false report. Amy Cooper was charged with a misdemeanour for filing a false report to the police and fired from her position in an investment firm after the video went viral. One can only imagine the dire consequence the false report would have had on Christian Cooper, were it not for the video recording.

In Nigeria, some arrests and governmental actions have been taken on account of amateur mobile phone video recordings. For instance, in April 2020, 'The Police in Osun... confirmed the arrest and detention of two of its personnel in a viral video torturing a woman in Iwo, while enforcing the Covid-19 lockdown order in the state.'<sup>51</sup> Similarly, Channels TV reported that 'The Nigeria Police Force identified three police officers and one civilian accomplice who participated in the unprofessional act of 'dehumanising' a female citizen as shown in a viral video of Wednesday, 22 July 2020... following a raid at the apartment of an alleged kidnapper.'<sup>52</sup> Moreover, Daily Trust TV reported that about 94 Nigerian girls stranded in Lebanon arrived the Murtala Muhammed International Airport (MMIA) Lagos on 12 August 2020, including those who appeared in a recent viral video recorded on a mobile phone in July 2020, in which they begged the Nigerian Government to come to their aid.<sup>53</sup> TVC News also reported the arrest of a jealous wife and her niece following mobile video footage where they stripped naked, molested, and flogged an alleged girlfriend of her husband whom he met on social media.<sup>54</sup>

The above instances clearly show the efficiency of mobile phone video recordings in crime investigation, arrest, and prosecution. It is therefore highly recommended that law enforcement

---

<sup>50</sup> Richard Hall, 'Amy Cooper faces charges after calling police on black birdwatcher in Central Park', Independent (New York, 6 July 2020.) <<https://www.independent.co.uk/news/world/americas/amy-cooper-police-charge-false-report-central-park-new-york-a9604651.html>> accessed on 10 September 2020.

<sup>51</sup> David O Royal, 'LOCKDOWN: Police arrest officers in viral video torturing woman in Osun,' Vanguard (20 April 2020) <<https://www.vanguardngr.com/2020/04/lockdown-police-arrest-officers-in-viral-video-torturing-woman-in-osun/>> Accessed 10 September 2020.

<sup>52</sup> Channels TV, 'Viral Video: Police Arrest Three Officers, One Other For 'Dehumanising' Woman', Channels TV (23 July 2020) <<https://www.channelstv.com/2020/07/23/viral-video-police-arrest-three-officers-one-other-for-dehumanising-woman/>> accessed on 10 September 2020.

<sup>53</sup> Daily Trust TV, 'Girls in viral video in Lebanon return to Nigeria' Daily Trust TV You Tube Channel (12 August 2020) <<https://www.youtube.com/watch?v=ORU9FgBzQFQ>> accessed on 10 September 2020.

<sup>54</sup> TVC News Nigeria, 'Community Watch | Viral Assault Video: Anambra Police Command Arrests Suspects' TVC News You Tube Channel (Nigeria, 28 March 2019) <[https://www.youtube.com/watch?v=1PdxT-fPm\\_M](https://www.youtube.com/watch?v=1PdxT-fPm_M)> accessed 10 September 2020.

agencies can and should use handy mobile devices as a veritable alternative to the high-end police interview systems, especially where the Government is unable or unwilling to provide. What is required is a table and some chairs, a mobile phone, a properly lit room achievable by moving window-blinds to the sides. Where possible, a simple Smartphone Video Stabilizer Rig Kit with Microphone which can be purchased at a cost as low as \$48.<sup>55</sup>

**Simple Data Storage Device:** Simple data storage devices like memory cards and hard drives should be provided for all the Divisional Police Stations for ease of storage of such audio-visual recordings of confessions.

**Sensitisation and ICT Training:** Officers of law enforcement agencies in Nigeria will need a goal-oriented and purpose-driven sensitisation to drive home the benefits of videotaping confession for both the prosecution and the suspect. There is also the need for general training on ICT with reference to the workings of the various recording devices they could use for this purpose. It is also important to note that as regards the use of handy mobile devices, most law enforcement officers are already seized of the capacity for its primary operations, which includes photograph snaps and video recording. What is therefore needed is training to enhance their use of mobile phone recording function to get the best video quality of a confession.

### **Conclusion And Recommendation**

Confessional statements are much desired by the prosecution and are of great speed to trials if they are unchallenged by the defendant. One of the reasons for challenging the admissibility of a confessional statement are questions relating to legitimacy, authenticity, and reliability of the confession. Once challenged, delay to the substantive trial is likely introduced. It is for this reason that the Administration of Criminal Justice Law of Lagos State made it mandatory for the e-recording of confessions when it employed the use of the word 'Shall.' Surprisingly, Section 15 (4) The Administration of Criminal Justice Act replaced the mandatory nature of the Lagos Law with a conditional word 'May' without any qualification to it. This position has the potential to create an

---

<sup>55</sup> An example can be seen from this online store, Powerextra Store, 'Powerextra Smartphone Video Stabilizer Rig Kit with Microphone + Light Diffuser + Mini Tripod for iPhone Samsung Huawei Nikon Sony Fujifilm Fit for Most Phones and Cameras.' Amazon. <<https://www.amazon.com/Powerextra-Smartphone-Stabilizer-Microphone-Diffuser/dp/B08168W11F/ref=rtpb>> accessed on 10 September 2020.

attitude of docility in prosecuting agencies to the electronic recording of confessions. The ACJA may have been couched in its present state, possibly, due to the above outlined perceived challenges. However, given handy mobile devices, availability of affordable data storage device, and the fact that most personnel of prosecuting agencies require very little or no training on mobile video recording, makes it compelling for an amendment of the said section to replace the word 'May' with 'Shall'. There is, therefore, no justification for retaining the current section as it is. The researches, therefore, strongly recommend the amendment of Section 15(4) of the ACJA to establish a bulwark for the admissibility of confessions in Nigeria.